

1
2
3
4
5
6 **BEFORE THE**
7 **BOARD OF REGISTERED NURSING**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2012-491

11 **DEFAULT DECISION AND ORDER**

12 **LINDSAY RACHEL DEALE, AKA**
13 **LINDSAY RACHEL KUCHENREUTHER**
14 **4143 Via Marina, Apt. 312**
15 **Marinia Del Rey, CA 90292**
16 **Registered Nurse License No. 663044**

[Gov. Code, §11520]

17 Respondent.

18 **FINDINGS OF FACT**

19 1. On or about February 23, 2012, Complainant Louise R. Bailey, M.Ed., RN, in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
21 of Consumer Affairs, filed Accusation No. 2012-491 against Lindsay Rachel Deale, aka Lindsay
22 Rachel Kuchenreuther (Respondent) before the Board of Registered Nursing. (Accusation
23 attached as Exhibit A.)

24 2. On or about August 9, 2005, the Board of Registered Nursing (Board) issued
25 Registered Nurse License No. 663044 to Respondent. The Registered Nurse License was in force
26 and effect at all relevant times herein and will expire on August 31, 2013, unless renewed.

27 3. On or about February 23, 2012, Respondent was served by Certified and First Class
28 Mail copies of the Accusation No. 2012-491, Statement to Respondent, Notice of Defense,
Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
and 11507.7) at Respondent's address of record which, pursuant to California Code of

1 Regulations, title 16, section 1409.1, is required to be reported and maintained with the Board.

2 Respondent's address of record was and is:

3 4143 Via Marina, Apt. 312
4 Marina Del Rey, CA 90292.

5 4. Service of the Accusation was effective as a matter of law under the provisions of
6 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
7 124.

8 5. On or about March 21, 2012, the aforementioned certified mailing documents were
9 returned by the U.S. Postal Service marked "Unclaimed."

10 6. Government Code section 11506 states, in pertinent part:

11 (c) The respondent shall be entitled to a hearing on the merits if the respondent
12 files a notice of defense, and the notice shall be deemed a specific denial of all parts
13 of the accusation not expressly admitted. Failure to file a notice of defense shall
14 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
15 may nevertheless grant a hearing.

16 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
17 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2012-
18 491.

19 8. California Government Code section 11520 states, in pertinent part:

20 (a) If the respondent either fails to file a notice of defense or to appear at the
21 hearing, the agency may take action based upon the respondent's express admissions
22 or upon other evidence and affidavits may be used as evidence without any notice to
23 respondent.

24 9. Pursuant to its authority under Government Code section 11520, the Board finds
25 Respondent is in default. The Board will take action without further hearing and, based on the
26 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
27 taking official notice of all the investigatory reports, exhibits and statements contained therein on
28 file at the Board's offices regarding the allegations contained in Accusation No. 2012-491, finds
that the charges and allegations in Accusation No. 2012-491, are separately and severally, found
to be true and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$8,661.75 as of April 2, 2012.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Lindsay Rachel Deale, aka Lindsay Rachel Kuchenreuther has subjected her Registered Nurse License No. 663044 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Registered Nursing is authorized to revoke Respondent's Registered Nurse License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case.:

a. Respondent is subject to disciplinary action under Sections 2750, 2761(a), 2761(d), 2762(a), and 4060 for unprofessional conduct, in that Respondent illegally obtained or was in possession of a controlled substance, to wit, Morphine/Morphine Sulfate (MS).

b. Respondent is subject to disciplinary action under sections 2750, 2762, subd. (e), on the grounds of unprofessional conduct, in that in or about August and September, 2009, while on duty as a registered nurse at CHLA, Respondent falsified, or made grossly incorrect, grossly inconsistent, or unintelligible entries in hospital, patient, or other record pertaining to controlled substances for patients. To wit, Respondent failed to document administration of MS; failed to document wastage of MS; and removed MS without physician orders.

c. Respondent is subject to disciplinary action under section 2750, 2762, subdivision (a), for violation of Health and Safety Code section 11173, subd. (a) in that in or about August and September 2009, while on duty as a registered nurse at CHLA, she obtained or possessed by fraud, deceit, subterfuge or misrepresentation, a controlled substance, to wit, MS.

d. Respondent is subject to disciplinary action pursuant to Sections 2750, 2761(a), 2761(d), and 2762(b) on the grounds of unprofessional conduct, in that in or about August and September 2009, Respondent used a controlled substance, to wit: MS, and that such use was further, in a manner dangerous or injurious to herself, or others.

1 e. Respondent is subject to disciplinary action pursuant to Sections 2750, 2761(a),
2 2761(d), 2762(a), and Health and Safety Code sections 11550 (a) and 11170 on the grounds of
3 unprofessional conduct, in that in or about August and September 2009, Respondent self-
4 administered and used a controlled substance, to wit: MS.

1 ORDER

2 IT IS SO ORDERED that Registered Nurse License No. 663044, heretofore issued to
3 Respondent Lindsay Rachel Deale, aka Lindsay Rachel Kuchenreuther, is revoked.

4 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
5 written motion requesting that the Decision be vacated and stating the grounds relied on within
6 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
7 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

8 This Decision shall become effective on August 16, 2012.

9 It is so ORDERED July 6, 2012

10
11 
12 FOR THE BOARD OF REGISTERED NURSING
13 DEPARTMENT OF CONSUMER AFFAIRS

14 default-decision_LIC.rtf
15 DOJ Matter ID: LA2011504473

16 Attachment:

17 Exhibit A: Accusation
18
19
20
21
22
23
24
25

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 SHAWN P. COOK
Deputy Attorney General
4 State Bar No. 117851
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-9954
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No.

2012-491

12 **LINDSAY RACHEL DEALE, AKA**
13 **LINDSAY RACHEL KUCHENREUTHER**
14 **4143 Via Marina, Apt. 312**
Marina Del Rey, CA 90292

A C C U S A T I O N

15 **Registered Nurse License No. 663044**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about August 9, 2005, the Board of Registered Nursing issued Registered
24 Nurse License Number 663044 to Lindsay Rachel Deale, aka Lindsay Rachel Kuchenreuther
25 (Respondent). The Registered Nurse License was in full force and effect at all times herein and
26 will expire on August 31, 2013, unless renewed.

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 118, subdivision (b), of the Code provides that the suspension/ expiration/ surrender/cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

6. Section 2811(b) of the Code provides, in pertinent part, that the Board may renew an expired license at any time within eight years after the expiration.

7. Section 480 of the Business and Professions Code provides, in pertinent part, that a board may deny a license if the applicant has been convicted of a crime substantially related to the qualifications, functions or duties of the business or profession for which application is made, has committed any act involving dishonesty, fraud or deceit, has committed any act which if done by a licentiate would be grounds for suspension or revocation of a license, or has knowingly made a false statement of fact required to be revealed in the application.

8. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

9. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

1

2 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
3 violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice
4 Act] or regulations adopted pursuant to it."

5 10. Section 2762 of the Code states:

6 "In addition to other acts constituting unprofessional conduct within the meaning of this
7 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
8 chapter to do any of the following:

9 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
10 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
11 administer to another, any controlled substance as defined in Division 10 (commencing with
12 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
13 defined in Section 4022.

14 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
15 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
16 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
17 himself or herself, any other person, or the public or to the extent that such use impairs his or her
18 ability to conduct with safety to the public the practice authorized by his or her license."

19 11. Section 4060 of the Code provides in pertinent part:

20 "No person shall possess any controlled substance, except that furnished to a person upon
21 the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug
22 order issued by a certified nurse midwife, . . . a nurse practitioner. . . , or a physician assistant. . ."

23 12. Health and Safety Code section 11550 (a) states in pertinent part:

24 "(a) No person shall use, or be under the influence of any controlled substance which is (1)
25 specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,
26 specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified
27 in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d)
28 or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in

Schedule III, IV, or V, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. . . .”

13. Health and Safety Code section 11170, states:

“No person shall prescribe, administer, or furnish a controlled substance for himself.”

14. Health and Safety Code section 11173(a) provides that no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

15. A “dangerous drug” is any drug unsafe for self-medication within the meaning of section 4022 in that it requires a prescription under federal law.

16. Section 125.3 of the Code provides, in pertinent part, that the Board/ Registrar/ Director may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CONTROLLED SUBSTANCES

a. “Morphine/Morphine Sulfate” (“MS”) is a Schedule II controlled substance as designated by Health and Safety Code sec. 11055(b)(1)(L), and is a “dangerous drug” pursuant to Business and Professions Code section 4022 because it requires a prescription under federal law.

FIRST CAUSE FOR DISCIPLINE

(Illegally Obtain / Possess Controlled Substance-Morphine/Morphine Sulfate)

17. Respondent is subject to disciplinary action under Sections 2750, 2761(a), 2761(d), 2762(a), and 4060 for unprofessional conduct, in that Respondent illegally obtained or was in possession of a controlled substance, to wit, Morphine/Morphine Sulfate (MS). The circumstances are as follows:

a. In or about August 2009, while working at Children's' Hospital of Los Angeles (CHLA) as a registered nurse Respondent diverted 283 mg of MS 10 mg vials.

b. On or about September 1, 2009, Respondent diverted seven (7) vials of MS 10mg while working her shift between 1231 and 2330 hours at CHLA.

b. An investigation conducted at CHLA of the narcotic usage reports for all nurses on duty between 0700 and 2300, including Respondent, on September 1, 2009, revealed that seven (7) vials of MS 10mg were removed from the Pyxis system but not administered to patients. All of the doses were removed between 1231 and 2330 hours.

c. Six out of seven of the vials of MS were removed from Pyxis within a minute of another drug having been removed. All of the removals of other drugs just prior to the removal of MS were done by different nurses. These nurses said they failed to log off the Pyxis system because other nurses were waiting behind them to access Pyxis and remove drugs.

d. The seventh vial of MS 10mg was removed by Respondent with the use of her Pyxis Bio ID (fingerprint). When questioned by CHLA supervisory staff, Respondent initially denied knowing anything about the removal of the MS and suggested that some other person(s) may have typed her Pyxis code in the keyboard. In fact, the removal from Pyxis was not done through entry of a code in Pyxis, but by Bio ID, Respondent's fingerprint. CHLA reviewed the shift work schedule for the twelve hour period that the seven vials of MS were removed and determined that only Respondent was in the department at that time.

e. The CHLA pharmacy conducted an audit of MS usage within the previous three (3) months and determined there was almost no usage of MS until August 2009. The morphine doses taken out of Pyxis in August 2009 that could not be found to be administered to patients or ordered by physicians but were removed from Pyxis using Respondent's Bio ID totaled 283 mg. The CHLA investigation revealed that no vials of MS were unaccounted for on days Respondent was not in the department.

f. On or about September 4, 2009, Susan Cline (Cline), Operations Manager for CHLA spoke with Respondent by phone. Respondent admitted to Cline that she had taken the MS vials found missing and unaccounted for on September 1, 2009.

g. Respondent admitted to Cline that she started diverting MS in the beginning of August 2009 but was unsure of the amount she had obtained from CHLA. Respondent stated she had disposed of the vials after being informed of the discrepancy on September 1, 2009. Respondent claimed she did not self-administer any of the morphine while on duty.

1 h Respondent admitted that she self-administered the MS for her seizures. Respondent
2 was terminated from CHLA on September 8, 2009.

3 SECOND CAUSE FOR DISCIPLINE

4 (Falsification of Records Pertaining to Controlled Substance- MS)

5 18. Respondent is subject to disciplinary action under sections 2750, 2762, subdivision
6 (e), on the grounds of unprofessional conduct, in that in or about August and September, 2009,
7 while on duty as a registered nurse at CHLA, Respondent falsified, or made grossly incorrect,
8 grossly inconsistent, or unintelligible entries in hospital, patient, or other record pertaining to
9 controlled substances for patients. To wit, Respondent failed to document administration of MS;
10 failed to document wastage of MS; and removed MS without physician orders The circumstances
11 are as alleged in the preceding paragraph 17, and all subparts, which Complainant incorporates by
12 reference as though fully set forth.

13 THIRD CAUSE FOR DISCIPLINE

14 (Obtaining/Possessing Controlled Substances By Fraud, Deceit,
15 Subterfuge or Misrepresentation- MS)

16 19. Respondent is subject to disciplinary action under section 2750, 2762, subdivision (a),
17 for violation of Health and Safety Code section 11173, subd. (a) in that in or about August and
18 September 2009, while on duty as a registered nurse at CHLA, she obtained or possessed by
19 fraud, deceit, subterfuge or misrepresentation, a controlled substance, to wit, MS. The
20 circumstances are as alleged in the preceding paragraph 17, and all subparts, which Complainant
21 incorporates by reference as though fully set forth.

22 FOURTH CAUSE FOR DISCIPLINE

23 (Dangerous Use of Controlled Substance-MS)

24 20. Respondent is subject to disciplinary action pursuant to Sections 2750, 2761(a),
25 2761(d), and 2762(b) on the grounds of unprofessional conduct, in that in or about August and
26 September 2009, Respondent used a controlled substance, to wit: MS, and that such use was
27 further, in a manner dangerous or injurious to herself, or others. The circumstances are as
28

1 alleged in the preceding paragraph 17, and all subparts, which Complainant incorporates by
2 reference as though fully set forth.

3 FIFTH CAUSE FOR DISCIPLINE

4 (Illegal Use and Self-Administration of Controlled Substance-MS)

5 21. Respondent is subject to disciplinary action pursuant to Sections 2750, 2761(a),
6 2761(d), 2762(a), and Health and Safety Code sections 11550 (a) and 11170 on the grounds of
7 unprofessional conduct, in that in or about August and September 2009, Respondent self-
8 administered and used a controlled substance, to wit: MS. The circumstances are as alleged in the
9 preceding paragraph 17, and all subparts, which Complainant incorporates by reference as though
10 fully set forth.

11 PRAYER

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Board of Registered Nursing issue a decision:

14 1. Revoking or suspending Registered Nurse License Number 663044, issued to
15 Lindsay Rachel Deale, aka Lindsay Rachel Kuchenreuther

16 2. Ordering Lindsay Rachel Deale to pay the Board of Registered Nursing the
17 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
18 Professions Code section 125.3;

19 3. Taking such other and further action as deemed necessary and proper.

20
21 DATED: February 23, 2012

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

22
23
24
25
26 LA2011504473
accusation.rtf